

Accessible Text File
HUBZone Mini-Primer #2
HUBZone Eligibility Requirements:
Principal Office – Employees - Residency
US Small Business Administration
Office of Government Contracting and Business Development
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Slide 1 HUBZone Eligibility Requirements: Principal Office – Employees - Residency
US Small Business Administration

This is about federal contract markets and participating in those markets as a HUBZone certified firm. Welcome to SBA's training module, ***HUBZone Eligibility Requirements -- Principal Office, Employees and Residency***. This module is the second, in a series of mini-primers about the HUBZone program.

Slide 2 Introduction

The HUBZone program is designed to help small businesses -- in certain urban, rural, BRAC, Indian reservation, and difficult development areas outside the U.S. mainland -- to gain access to federal procurement opportunities. HUBZone areas or HUBZone designations are typically areas of low median household incomes or high unemployment, or both.

This mini-primer is designed to help firms to better understand HUBZone eligibility requirements, specifically, requirements that pertain to the location of the firm's principal office and requirements concerning the firm's employees.

Slide 3 Program Purpose

But first, and importantly, the HUBZone program has one purpose: to help small businesses in both urban and rural communities.

It provides federal contracting assistance to qualified small firms located in historically underutilized business zones -- or HUBZones -- to increase employment opportunities, stimulate capital investment in those areas, and empower communities through economic leveraging.

Slide 4 How the Program Works

The U.S. Small Business Administration regulates and implements the HUBZone program. As such, SBA determines which businesses are eligible for the program, maintains a listing of qualified HUBZone small businesses that can be used by federal agencies to fulfill procurement needs and adjudicates protests of eligibility regarding HUBZone contracts.

Status protests are those that deal with compliance of the principal office, 35% employee HUBZone residency and/or ownership and control requirements. Size protests are handled by another SBA office.

Slide 5 Eligibility Requirements

To be eligible for the HUBZone program a business must meet specific criteria.

That is: it must be a small business by SBA standards and, if applicable, together with affiliates it must also be a small business; it must be directly owned and controlled by at least 51% U.S. citizens or a community development corporation, an agricultural cooperative, or an Indian tribe; its principal office must be located within a designated HUBZone, which includes lands considered “Indian country” and military facilities closed by the Base Realignment and Closure Act; and, at least 35% of its employees must reside in a HUBZone.

Slide 6 Training Focus

The focus of this training is to review principal office location requirements and requirements surrounding the “35 percent rule.” These requirements are often misunderstood. In fact, some 85 percent of the firms initially declined for HUBZone certification, or decertified after being approved were declined or decertified because of a misunderstanding or misinterpretation of the principal office location and/or employee residency requirements.

To understand these two important eligibility tenets, the requirements concerning who is considered a HUBZone employee must be clearly understood.

Slide 7 Employees

Topic Divide – Requirements concerning employees.

Slide 8 Who are Considered HUBZone Firm Employees?

Who are considered HUBZone firm employees?

Under HUBZone regulatory guidelines, the term “employee” means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours per month. This includes temporary employees and co-employed employees working under a professional employer organization agreement.

Volunteers are not considered employees. However, the following individuals are not volunteers and need to be counted as employees: those who have a deferred compensation agreement or receive in-kind compensation; and, those who have an ownership interest in and work for the HUBZone firm a minimum of 40 hours per month, even if they do not receive any compensation.

So, if an owner receives compensation but only works 20 hours per month, that owner will not be considered as an employee, even if the owner gets paid for the work. SBA has developed a series of Frequently Asked Questions – referenced in the noted hyperlink – that answer questions such as: How should I count an employee who is on leave at the time my firm is being reviewed for HUBZone compliance? Or, how do I count seasonal employees? Many other questions are also considered.

This FAQ resource, as well as the regulatory reference, can be very helpful.

Slide 9 Employee / Independent Contractor

When is an independent contractor considered an employee?

SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1, in determining whether individuals are employees of a concern.

Regardless of whether your firm labels an individual an independent contractor, you must still determine if that individual should be treated as an employee for the purpose of determining the firm's HUBZone eligibility. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor. No one factor stands alone in making this determination. Factors which are relevant in one situation may not be relevant in another.

The IRS website has good resources to help you evaluate if the individual should be considered as an employee. Use the referenced hyperlinks at your convenience.

Here is an important rule of thumb: When in doubt as to whether to count an individual as an employee . . . Count that person toward the total employee count.

Slide 10 Employee – Example 1

Let's consider an example. Example 1.

ABC, Inc. engages Betty Jones on a 1099 basis from March 2013 through August 2013.

Ms. Jones performed many duties: including contracts management; bid and proposal support; was responsible for coordinating task orders with ABC, Inc. customers, including understanding customer needs and developing the appropriate technical solution, and acting as a liaison with ABC customers to ensure the smooth delivery of products and services.

Betty did not have a signed consulting agreement with the ABC company and performed much of her responsibilities from home. She did not have any other clients and she logged her work hours into ABC's payroll system. Further, among other things, Ms. Jones had an email address issued from ABC, Inc.

Slide 11 Is Betty and Employee? – Answer Example 1

Is Betty Jones an employee? The answer is yes.

Considering the totality of the circumstances, she would be considered an employee.

Slide 12 Employee – Example 2

ABC, Inc. engages Steve Smith on a 1099 basis to perform bookkeeping services. Mr. Smith has a signed contract with ABC that specifies the work to be performed, cost and delivery schedule for deliverables. He performs his work from his home in Providence, RI, has three other clients besides ABC, and at the end of each month, Mr. Smith issues his monthly invoice for the services performed to ABC.

He also has his own business cards and e-mail address.

Slide 13 Is Steve an Employee? – Answer Example 2

Is Steve Smith an employee? The answer is no.

Considering the totality of the circumstances, he would not be considered an employee.

Slide 14 Employee – Example 3

HUBZone Contractor A, Inc. has an employee named Sue Smith who gets paid only on a commission basis. How much she gets paid is tied to her monthly sales volume. Sue works about 160 hours per month.

Slide 15 Is Sue an Employee? – Answer Example 3

Is Sue Smith an employee? The answer is yes.

Sue is considered an employee because she is expecting to receive compensation.

Slide 16 Principal Office Requirements

Topic Divide – Principal office requirements.

Slide 17 Principal Office – Defined

Ok.... So, regarding the principal office, we know from earlier in this presentation that the principal office must be located in a designated HUBZone. However, and this is important, it must also be the location where the greatest number of the firm's employees - at any one location - perform their work.

When determining if a firm meets the principal office requirement, it must be clearly demonstrated that the largest number of employees – meeting the definition of an employee – perform their work at the location deemed as the principal office. In this accounting, employees who may come to the principal office to pick up their work orders but then they go to work in job sites, would not be counted as employees who work in the principal office.

Again, and importantly, in determining where the greatest number of employees who work at any one location perform their work -- *the definition of the term employee*, -- as discussed previously, must be considered and appropriately applied.

Slide 18 More Clarity – Principal Office

The firm's headquarters does not have to be its "principal office". This is an important distinction. A firm can have multiple locations that it leases or owns and still meet the principal office requirement if the office that is located in a HUBZone has the greatest number of its employees performing their work there.

Slide 19 Are PO Requirements Satisfied? – Example 1

Let's consider our first example. Does Company B, Inc. meet the principal office requirement? Company B, Inc. is a small IT services company. Its headquarters is located in an urban area that is not a designated HUBZone, according to the map. The two owners and an administrative support person spend the majority of their work hours at the headquarters location.

Across the street, in a qualified census tract, there is a government facility where 6 engineers, employed by Company B, perform contract specific work.

Further, the owners and the administration team all live in a HUBZone a few miles away. Of the six employees at the government site, one of them is part time and works only 20 hours every week. Further, only one of the six employees who works at the government site lives in a HUBZone.

Slide 20 Company B – Answer Example 1

Company B, Inc. does not meet the principal office requirement. This is why...

When evaluating the principal office requirement, where employees live, is not relevant. What matters is where the greatest number of employees - at any one location - perform their work. In this example, most of Company B's employees work at the government site. The government site is considered a job site and as such the employees who work there cannot be counted towards the principal office calculation.

So, that leaves 3 employees who work in the firm's only office, which is not in a HUBZone. Remember, when analyzing the principal office, the 35% rule is not applicable.

Slide 21 Are PO Requirements Met? – Example 2

Does XYZ, Inc. meet the principal office requirement?

The XYZ company executed a 6 month contract to obtain: management of mail, faxes and couriers; a receptionist to answer calls in the company name; and, 40 hours per month of complimentary use of a private office for one person. XYZ, Inc. has two employees, the owner and an administrative assistant. In addition, the owner works 160 hours per month from home, which is not in a HUBZone and the administrative assistant works 40 hours per month from the firm's office.

The XYZ company does not have any job sites.

Slide 22 XYZ, Inc. - Answer Example 2

The answer is no.

XYZ, Inc. has 2 offices, one in a HUBZone where the administrative assistant works and the other office is the owner's home. As such there is no greater number of employees working at the HUBZone location. It is important to note, that the agreement for the office use was for 40 hours per month for one person.

So, even if the owner was to decide to no longer work from home and move her work to the new office space, the agreement would need to be amended to properly reflect the increase of monthly hours and the number of people working from that location.

Slide 23 35 Percent Rule – HUBZone Residency Requirement

Topic Divide - HUBZone residency requirement, the 35% rule.

Slide 24 HUBZone Residency Requirement

Ok, so we have talked about employees and principal office requirements.

Now, let's take a closer look at the HUBZone residency requirement, that at least 35% of the firm's employees must reside in a HUBZone.

Slide 25 HUBZone 35% Rule –Example 1

Does Company J, Inc. meet the 35% requirement?

Company J is a small IT services company where: its headquarters is located in an urban area that is not a HUBZone; two owners and an administrative support person spend the majority of their work hours at headquarters; across the street, in a qualified census tract, is a government facility where 6 engineers perform contract specific work for the company; owners and the administration support person all live in a HUBZone a few miles away; six employees work at the government site - one of them is part time and works only 20 hours every week; and, only one of the six employees who works at the government site lives in a HUBZone.

Slide 26 – Answer HUBZone 35% Rule – Example 1

Does Company J meet the 35% requirement? **YES.**

Remember, when determining if a firm meets the 35% employee HUBZone residency requirement, where employees work – does not need be considered.

Slide 27 Resources and Tools

Topic Divide – Resources and tools.

Slide 28 Resources and Tools

There are some very powerful resources and tools available to assist you to better understand the HUBZone program. Use these resources and others to learn, discover and expand your understanding.

Slide 29 Contact Us...

Thank you for taking the time to learn about HUBZone program. Please contact us if you have any additional questions.

Thank you.

Hyperlinks Contained in the Course

Small Business Act – HUBZone Statute

http://www.sba.gov/sites/default/files/Small%20Business%20Act_0.pdf

HUBZone Maps Page <http://map.sba.gov/hubzone/maps>

HUBZone Regulations [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7f10b57ab16b755f85493361636352c1;rgn=div5;view=text;node=13:1.0.1.1.21;idno=13;c=ecfr)

[idx?c=ecfr;sid=7f10b57ab16b755f85493361636352c1;rgn=div5;view=text;node=13:1.0.1.1.21;idno=13;c=ecfr](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7f10b57ab16b755f85493361636352c1;rgn=div5;view=text;node=13:1.0.1.1.21;idno=13;c=ecfr)

eMail Alerts https://public.govdelivery.com/accounts/USSBA/subscriber/new?topic_id=USSBA_14

SBA/HUBZone Website <http://www.sba.gov/hubzone>

GC Classroom www.sba.gov/gcclassroom

Code of Federal Regulation (13CFR)

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>